

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
MICHAEL ERDE and SUSAN ERDE, as :
Parents and Natural Guardians of J.E., and :
MICHAEL ERDE and SUSANNE ERDE, :
Individually, :
:
Plaintiffs, :
:
- against - :
:
DAVID C. BANKS, in His Official Capacity :
as Chancellor of the New York City :
Department of Education, and NEW YORK :
CITY DEPARTMENT OF EDUCATION, :
:
Defendants. :
:
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21-CV-9285 (VSB)(VF)

OPINION & ORDER

Appearances:

Ashleigh C Rousseau
Rory J. Bellantoni
Brain Injury Rights Group, Ltd.
New York, NY
Counsel for Plaintiffs

Min Kyung Michelle Cho
New York City Law Department
New York, NY
Counsel for Defendants

VERNON S. BRODERICK, United States District Judge:

Before me is Magistrate Judge Valerie Figueredo’s unobjected to Report and Recommendation, entered on December 28, 2022. (Doc. 40, the “Report”.) On November 9, 2021, Plaintiffs “Michael and Susan Erde[,] the parents and natural guardians of J.E., a teenage student who sustained a brain injury at birth and suffers from cerebral palsy, quadriplegia, and various other disorders,” (*id.* 4), filed a complaint against Defendants pursuant to the Individuals

with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 et seq., (*see generally* Doc. 1). On March 21, 2022, Plaintiffs moved for summary judgment. (Doc. 18.) Defendants cross-moved for summary judgment on April 20, 2022. (Doc. 21.) I referred the motions to Judge Figueredo, (Doc. 30), who issued the Report on December 28, 2022, (Doc. 40). In the Report, Judge Figueredo recommends that Plaintiffs’ motion for summary judgment be granted in part and denied in part, and that Defendants’ cross-motion for summary judgment be granted in part and denied in part. Specifically, Judge Figueredo recommends that Plaintiffs’ outstanding tuition dues to the International Institute for the Brain (“iBrain”) be paid by Defendants directly to iBrain, less \$2,000.00. (*Id.* 24.)

In reviewing a magistrate judge’s report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within 14 days of being served with a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). When a party submits a timely objection, a district court reviews de novo the parts of the report and recommendation to which the party objected. 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). When neither party submits an objection to a report and recommendation, or any portion thereof, a district court reviews the report and recommendation for clear error. *Santana v. Comm’r of Soc. Sec.*, No. 17-CV-2648 (VSB) (BCM), 2019 WL 2326214, at *1 (S.D.N.Y. May 30, 2019); *Marte v. Berryhill*, No. 17-CV-3567 (VSB) (JLC), 2018 WL 5255170, at *1 (S.D.N.Y. Oct. 22, 2018); *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

With regard to the time to file objections, Judge Figueredo informed the parties that

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections. . . . A party may respond to any objections within 14 days after being served. Any objections and responses shall be filed with the Clerk of the Court. Any request for an extension of time to file objections or responses must be directed to the Honorable Vernon S. Broderick.

Despite Judge Figueredo's admonition, neither party filed an objection or a request for more time to file an objection. (Doc. 40, at 25.) I have reviewed Judge Figueredo's detailed and logical Report for clear error and, after careful review, found none. Accordingly, I ADOPT the Report in its entirety.

The parties shall submit a joint letter to me setting out any remaining issues that need to be adjudicated in this action and a schedule for addressing those issues. This letter shall be submitted on or before February 10, 2023.

The Clerk of Court is respectfully directed to enter judgment consistent with the terms stated in the Report. The Clerk of Court is further directed to terminate the motions at Docs. 18 and 21.

SO ORDERED.

Dated: January 24, 2023
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style. The first name "Vernon" is written in a larger, more prominent script than the last name "Broderick".

Vernon S. Broderick
United States District Judge